



# Focus

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## Water Right Relinquishment

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Washington's water law includes a principle that a water right is perfected, defined, and maintained through beneficial use. The expression "use it or lose it" is sometimes applied to describe this western water law principle. Put simply, a water right may be wholly or partially lost through extended periods of non-use. The return of unused water to the state is called *relinquishment*. The purpose of relinquishment is to ensure that Washington's limited water sources are put to maximum beneficial use for all of Washington's citizens.

Today, new sources of water do not come as cheaply or easily as they once may have. Often people must mitigate the impact their use of water might cause, or purchase water rights from someone else for their own use. How does this "use it or lose it" principle affect mitigation or transfers? Any relinquished portion of a water right cannot be considered for a change or transfer. Changes to existing water rights often solve water problems, but there are some risks and uncertainties in determining the full extent of a water right available to be altered.

Chapter 90.14 RCW, *Water Rights--Registration--Waiver and Relinquishment, etc.* reads in part:

*"Any person hereafter entitled to divert or withdraw waters of the state through an appropriation... who abandons or voluntarily fails, without sufficient cause, to beneficially use all or any part of said right for a period of five successive years shall relinquish such right or portion thereof, and such right shall revert back to the state..."*

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### Five successive years of non-use

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Five, or more, successive years of non-use will trigger relinquishment of a water right unless there is sufficient cause to explain the non-use. The burden to prove sufficient cause rests on the water right holder. According to the law (*RCW 90.14.140*), the twelve sufficient causes for non-use of a water right are as follows:

- Drought, or other unavailability of water;
- Active service in the armed forces of the U.S. during military crisis;
- Non-voluntary service in the armed forces of the U.S.;
- Operation of legal proceedings;
- Federal or state agency leases of, or options to, purchase lands or water rights which preclude or reduce the use of the right by the owner;
- Federal laws imposing land or water use restrictions;
- Power development purposes and annual license fees are paid;
- Standby or reserve water supply to be used in time of drought or other low flow period;

- A determined future development, to take place within 15 years of non-use;
- Municipal water supply;
- Waters are not subject to appropriation under the provisions of RCW 90.40.030 (public lands); or
- Lease of the right to another person for use on new land, if the person leasing it makes beneficial use of the right and a transfer has been approved by Ecology.

A person who uses water may voluntarily relinquish a water right and should do so if the water use has diminished or completely stopped for five or more successive years. A form to relinquish a water right can be obtained by calling your local Ecology regional office (addresses listed below). Relinquishment can also occur when Ecology notifies a water right holder (through an administrative order) that the question of relinquishment has been raised by a third party. Ecology will declare in the order that the water right has been relinquished unless sufficient cause for not using the water is shown either to Ecology or via an appeal to the Pollution Control Hearings Board. If sufficient cause isn't shown, the water right will be relinquished.

### **Make your own evaluation of a water right document**

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If you are interested in a particular water right, make your own independent assessment on whether that right has been continuously used in the manner described in the water right document. If a water right has been relinquished and the paperwork completed, Ecology regional offices should have the information in their records. However, be aware that non-use without sufficient cause for five or more successive years may result in relinquishment whether the paperwork is completed or not. This is a very important issue to research before purchasing property. If you currently own a water right, you may be required to defend the history of water use when requesting to make changes to a water right document.

### **For more information**

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Please contact the Department of Ecology regional or field office nearest you:

<b>Northwest Regional Office</b>	3190 - 160th Avenue SE Bellevue, WA 98008-5452	(425) 649-7000 TDD (425) 649-4259
<b>Southwest Regional Office</b>	P.O. Box 47775 Olympia, WA 98504-7775	(360) 407-6300 TDD (360) 407-6306
<b>Eastern Regional Office</b>	N. 4601 Monroe, Suite 202 Spokane, WA 99205-1295	(509) 456-2926 TDD (509) 458-2055
<b>Central Regional Office</b>	15 W. Yakima Ave., Suite 200 Yakima, WA 98902-3452	(509) 575-2597 TDD (509) 454-7673
<b>Vancouver Field Office</b>	2108 Grand Boulevard Vancouver, WA 98661-4622	(360) 690-7171 TDD (360) 690-7147
<b>Nooksack Field Office</b>	1204 Railroad Avenue, Suite 200 Bellingham, WA 98225	(360) 738-6250 TDD (425) 649-4259

This document can be accessed through Ecology's home page on the World Wide Web. The address is: <http://www.wa.gov/ecology/> If you have special accommodation needs or require this document in alternative format, please contact Paula Smith at (360) 407-6607 (Voice) or (360) 407-6006 (TDD).